

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE**

[2022] NZERA 261
3117396

BETWEEN WARISSARA MATAJOD
Applicant

AND CRAZY HORSE LIMITED
Respondent

Member of Authority: Claire English

Representatives: Madison Prattley and Louise Taylor as co-counsel for the
Applicant
James Hobcraft, counsel for the Respondent

Submissions received: 20 April and 5 May 2022 from Applicant
4 May 2022 from Respondent

Determination: 21 June 2022

DETERMINATION OF THE AUTHORITY (No. 2)

Background

[1] In my determination dated 23 February 2022, I found that the applicant, Ms Matajod, was entitled to be paid outstanding wages, outstanding holiday pay, payment for certain public holidays, compensation for lost wages, interest on unpaid monies, and a sum in compensation for hurt and humiliation, in the sum of \$12, 290.38.

[2] The respondent made application for additional orders that awards be paid by instalments.

[3] In my determination of 5 April 2022, I ordered that the respondent pay to Ms Matajod the sum of \$7,750 towards costs, as well as disbursements of \$306.66 (a total of \$8,056.66). This was to be paid by instalments over 24 months, at the rate of \$335.69 per month.

[4] On 20 April 2022, the applicant made further submissions on the respondent's application for orders to pay awards by instalments. The applicant also made application on this same date seeking a variation to the costs orders, namely, a submission that the costs awarded to the applicant be payable in a lump sum.

[5] On 4 May 2022, the respondent filed submissions in reply, reiterating its request for payment by way of instalments, on the grounds of its financial situation.

[6] The applicant filed further submissions on 5 May 2022, confirming the matters that the applicant believed were at issue between the parties.

[7] These may be summarised as follows:

- a. Should the awards made in favour of the applicant by way of the determination dated 23 February 2022 be payable by instalments?
- b. Should the award of costs made in favour of the applicant by way of the determination dated 4 April 2022 be varied so as to require those costs to be paid by way of lump sum rather than by instalment?

[8] The applicant's position on both these matters may be summarised as follows:

- a. That the respondent has failed to meet the high threshold required to establish that its financial situation in fact requires payment by way of instalments. In the applicant's view, the financial information provided by the respondent is insufficient and incomplete, and falls short of demonstrating (for example, by reference to either lending availability or the respondent's assets) that the respondent is in such a position that payment by way of instalments is required.
- b. In addition, the interests of justice do not justify payment by way of instalment, particularly as payment of wages should be a priority, and any such order would leave the applicant in an inferior position to other creditors. The applicant should not have to wait for her money.

- c. In the alternative, the applicant has proposed what is described as a “compromise solution”, where the timeframe for payment is reduced, and interest is payable on the outstanding amounts until they are paid.

[9] The respondent has elected not to file full submissions in response, but its position is briefly expressed, namely that “it once again reiterates its precarious financial situation and inability to meet any award other than by method of instalments.” The respondent has previously filed profit and loss statements and accounts payable statements for February and March 2022. These show that the business is (at least over these two months) operating at or close to a loss, and has relatively significant outstanding accounts relating to its business expenses.

[10] Payment by instalment may be ordered “only if the financial position of the respondent requires it”¹. The applicant’s position is very clear, in that she simply does not accept that the respondent is truly experiencing financial difficulties, such that payment by instalments is rightly required.

[11] I have considered that the respondent has only provided two months’ worth of information in response to the costs application and application for payment by instalments. I have also considered that the information shown in those statements shows a pattern of spending, and spending on certain types of goods and services, that appears typical for a small to medium sized hospitality enterprise. I note these recent financial statements disclose specific financial details that are consistent with the in-person evidence provided by the director of the respondent at the substantive investigation meeting as to how his business was run, and the practical and financial challenges the business had faced from early 2020 onwards.

[12] Having considered the matter, I am of the view that the respondent has sufficiently demonstrated that it will have real practical difficulties meeting an order for payment to the applicant immediately and in a lump sum. Accordingly, it is my view that the financial position of the respondent does require that orders for payment by instalment be made. This applies equally to both the substantive awards arising from the determination

¹ See sections 123(2) and 131(1A) of the Employment Relations Act 2000, among others.

of 23 February 2022, and the award for costs arising from the determination of 5 April 2022, as these sums will both need to be funded by and from the respondent's business.

[13] However, I have also considered the submission that as a matter of fairness, the applicant should not have to wait for her money, and that an award for payment over an "unreasonable" length of time could have the effect of undermining the applicant's position as an unsecured creditor.

[14] In this regard, I have again considered the previous submissions made by the respondent², that awards of "arrears" be payable over a 12 month period, and other awards be paid over a 24 month period.

[15] I have also considered the "compromise" now proposed by the applicant, that the substantive award of \$12, 290.38 arising from the 23 February 2022 determination be paid as follows:

- a. An initial payment of \$3,000 within seven days of the order being made;
- b. Followed by payment of the remainder in monthly instalments over six months (which equates to \$1,548.40 per month);
- c. Plus interest calculated in accordance with the Interest on Money Claims Act 2016; and
- d. A condition that, should the respondent fail to make any payments in full or on time, the outstanding amount becomes immediately payable.

[16] In relation to the costs award, I note for the avoidance of doubt that the applicant also submits that the costs determination of 4 April 2022 be re-opened and costs ordered to be paid in full. Notwithstanding its primary position, the applicant makes an alternative submission that, if the Authority considers payment by instalments is appropriate, alternative orders for payment be made as follows:

- a. Payment of costs in monthly instalments over six months (which equates to a further \$1,342.78 including the disbursements);

² Memorandum of Counsel for the Respondent dated 23 March 2022 at paragraph 34.

- b. plus interest calculated in accordance with the Interest on Money Claims Act 2016;17 and
- c. A condition that, should the respondent fail to make any payments in full or on time, the outstanding amount becomes immediately payable.

[17] Having reached the conclusion that payment by instalments is necessary, I have gone on to consider the applicant's alternative position as a whole, which would require the respondent to pay the sum of \$3,000 almost immediately, and then make payment of somewhat over \$2,891.18 each month for the next 6 months (taking the request that interest also be awarded into account).

[18] While it is desirable that the applicant receive access to her money in a timely way, it is also desirable that orders are made that the respondent can reasonably comply with, which in turn should give the applicant in fact greater security of the full receipt of all her money albeit over time.

[19] Taking all this into account, I consider that the applicant should receive a prompt payment of \$3,000 to allow her to realise at least some of the benefit of the determination of 23 February 2022. After this, the remaining awards shall be paid off over 12 months, in equal instalments.

[20] Having reached this point, I now need to consider the applicant's claim for interest until payment is made in full.

[21] The Interest on Money Claims Act 2016 (IMCA 2016) states:

Section 10 – Mandatory award of interest

In every money judgment, a court must award interest under this section as compensation for a delay in the payment of money.

[22] The section is self-described as “mandatory”, and states that interest “must” be awarded.

[23] In addition, the Act specifically provides for payment by instalments, and the calculation of interest in such cases, at section 15.

[24] Section 10 provides that interest must be awarded on any money claims down to the date of judgement. However, the question in this case is slightly different, and is: can interest be awarded accruing after the date of judgement, until the judgement debt is paid in full?

[25] Section 9 of the IMCA 2016 provides that the answer to this question is “yes”. This is because section 9(1)(b) states that “a court must award interest under this Act for the period that...ends on the day on which the judgement debt (including all interest payable under this Act) is paid in full.”

[26] In addition, section 9(3) states that interest “does not accrue after the date of payment on an amount paid...after the date of judgement, towards satisfying a judgement debt.”

[27] This subsection requires that interest continues to accrue until the judgement debt is fully paid, noting that subsection 9(3) makes it clear that interest is no longer payable on any amounts that have been part paid, regardless of whether those payments are made before or after the date of judgement. Interest continues to accrue until payment, regardless of whether that payment occurs before or after the date of judgment. This is consistent with the more specific provision for payment by instalments set out at section 15 of the IMCA 2016.

[28] In the present case, I have formed the view that interest can potentially be awarded against the respondent in the situation where payment of the judgement debt is to be by way of instalment, and I am reinforced in my view as the Civil Debt Calculator tool enables these calculations to be performed. The language of sections 9 and 10 of the IMCA 2016 provide that an award of interest is mandatory if the amounts are owing.

[29] The applicant’s claim for interest down until the date of final payment in full was clearly set out in the applicant’s two memoranda dated 20 April 2022. The respondent has not provided any particular response to this, apart from its general position already noted above.

[30] Accordingly, I am of the view that it is fair and reasonable, as well as required by the IMCA 2016, for interest to be awarded down to the date of payment in full. This

interest shall be calculated in accordance with the Interest on Money Claims Act 2016, using the Civil Debt Calculator on-line tool administered by the Ministry of Justice³. If the respondent defaults on the monthly payments, the remainder of the debt will then fall due, allowing the applicant to immediately take any further proceedings she deems necessary to recover it.

[31] For the avoidance of doubt, these orders will apply to both the substantive awards made on 23 February 2022, and the costs awards made on 5 April 2022. I acknowledge that I have, in part, reconsidered my view on the payment by instalments made in the 5 April 2022 determination, and the orders in this determination are to take effect as a variation on that determination, as far as the orders for payment by instalments go⁴.

Orders

[32] Crazy Horse Limited is to pay Ms Matajod the total sum of \$20,347.04 (being made up of the substantive award of \$12,290.38 arising from the 23 February 2022 determination, plus \$7,750 costs and disbursements of \$306.66 arising from the 5 April 2022 determination).

[33] The sum of \$20,347.04 is to be paid by instalments, as follows:

- a. \$3,000.00 is to be paid to Ms Matajod within 7 days of the date of this determination.
- b. The remainder of \$17,347.04 is to be paid over 12 months, in 12 equal instalments of \$1,445.59 each, with the first instalment being due as of 1 July 2022, and payable on the first of each month thereafter.
- c. Interest is to be payable on the sum of \$17,347.04 calculated in accordance with the Civil Debt Interest Calculator, being an additional \$14.23 each month.
- d. Should Crazy Horse Limited fail to make any payments in full or on time, the outstanding amount will become payable in full as of the date of the default, and interest will accrue accordingly.

³ <https://www.justice.govt.nz/fines/civil-debt-interest-calculator/>

⁴ The sums awarded by way of costs and disbursements have not been put at issue, and are not varied.

[34] The determination of 5 April 2022 is varied accordingly.

Claire English
Member of the Employment Relations Authority